

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHRISTOPHER GODSON,)	
on behalf of himself)	
and all others similarly situated,)	No. 1:11-cv-0764-EAW-HKS
)	
Plaintiff,)	CLASS ACTION
)	
v.)	
)	
ELTMAN, ELTMAN & COOPER, P.C.,)	
and LVNV FUNDING, LLC,)	
)	
Defendants.)	

Declaration of Plaintiffs' Attorney Kenneth R. Hiller

Under 28 U.S.C. § 1746, I, Kenneth R. Hiller, do hereby declare under penalty of perjury, that the following is true and correct:

1. I am one of Plaintiff's attorneys in this action.

Background and Qualifications

2. In 1980, I was graduated from Kent State University with a B.A. in Political Science.
3. In 1983, I was graduated from the State University of New York at Buffalo Law School with a J.D.
4. I was admitted to the New York State Bar (Appellate Division, Fourth Department) on February 17, 1984, and remain a member in good standing of that bar.
5. I am a member in good standing of the following federal courts:

U.S. Bankruptcy Court for the Western District of New York
1988

U.S. District Court for the Western District of New York
March 9, 1990

U.S. District Court for the Northern District New York
March 3, 1995

U.S. District Court for the Southern District New York
July, 2014

U.S. District Court for the Eastern District New York
July, 2015

U.S. District Court for the Western District Pennsylvania
June, 2012

U.S. District Court for the Southern District of Indiana
August, 2017

U.S. District Court for the District of Columbia
January 7, 2013

U.S. District Court for the Western District of Texas
May, 2017

United States Court of Appeals for the Second Circuit
July 6, 1994

United States Court of Appeals for the Third Circuit
May, 2014

United States Court of Veterans Claims
November 28, 1994

6. I have also been admitted *pro hac vice* to the following courts:

U.S. District Court for the District of Nevada

U.S. District Court for the Northern District of Georgia

U.S. District Court for the Middle District of Georgia

U.S. District Court for the Middle District of Florida

U.S. District Court for the Middle District of Pennsylvania

7. From 1984 until 1985, I was employed by the law office of Jensen, Hall, Ricketts and Markey in East Aurora, New York.

8. From 1985 through 1987, I was employed by the Hyatt Legal Services in West Seneca, New York, and then in Rochester, New York.

9. From 1987 through 1988, I was employed by the law office of Gallo & Iacovangelo in Rochester, New York.

10. From 1988 through 1999, I was employed by the law office of Jeffrey Freedman Attorneys at Law in Buffalo, New York.

11. I began handling consumer bankruptcy cases in 1988 at Jeffrey Freedman Attorneys at Law, a law firm that handles a high volume of such cases. From 1988 through 1999, I handled thousands of bankruptcy cases in the United States Bankruptcy Court, Western District of New York. Besides Jeffrey Freedman himself, who primarily limited his involvement in bankruptcy matters to managing the business aspect of the practice as well as some initial client interviews, I was the most senior attorney handling bankruptcy matters. As such, I was often assigned a case if it was deemed unusually difficult.

12. That by its' very nature, consumer bankruptcy practice requires an attorney to become involved in a variety of consumer related matters. For example, loan documents must be reviewed to determine if there is a violation of the truth-in-lending laws, and debtors are often found to be a victim of

consumer frauds. In addition, I handled litigation against creditors who violated the bankruptcy automatic stay and discharge.

13. That in connection with many of the bankruptcy cases that I handled, I commenced and took to trial numerous student loan hardship discharge cases brought pursuant to 11 U.S.C. § 523(a)(8). I estimate I handled between five to ten of these trials. Among the reported cases in this area in which I have been involved are the following:

In re. Lavoie, 292 B.R. 504 (Bankr.W.D.N.Y.2003)

In re Goranson, 183 B.R. 52 (Bankr.W.D.N.Y.1995)

14. In 1996, your deponent was local counsel for a Fair Debt Collection Practices Act (FDCPA) case that proceeded ultimately to a jury verdict. (*Victori v. Accelerated Bureau, et al.*, 96-cv-0263). After having had the opportunity to observe that litigation, and after attending a national conference focusing on FDCPA litigation, your deponent began handling FDCPA cases for consumers.

15. Your deponent opened his own law office in August of 1999.

16. Since 2005, my firm has handled approximately 800 cases on behalf consumers in the Western District of New York. The vast majority of those cases arose under the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act of 1991, and the Fair Credit Reporting Act. I personally handled the litigation in a large number of these matters. On others, members of my staff handled the litigation, however I supervised and collaborated with them during the litigation.

17. That in August of 1999, I left Jeffrey Freedman Attorneys at Law and opened my own practice. I currently have two lawyers working as associates for me who also handle consumer oriented litigation.

18. That in addition to my consumer practice, I handle a large volume of Social Security Disability claims. I have handled well over 100 district court actions in that field, and have taken approximately 8 cases to the Court of Appeals for the Second Circuit.

19. I am a member of the following professional organizations:

Erie County Bar Association
National Association of Consumer Advocates
National Organization of Social Security Claimants
Representatives
National Employment Lawyers Association

20. I am experienced in trial and appellate court litigation and have the following reported cases, among others:

Sharp v. Ally Financial, Inc., 2018 WL 4300018,
(W.D.N.Y. September 10, 2018).

Clayson v. Rubin & Rothman, LLC, 2010 WL 4628516
(W.D.N.Y. Nov. 16, 2010)

Starkey v. Firstsource Advantage, LLC, 2010 WL 2541731
(W.D.N.Y. June 21, 2010)

Strom v. National Enterprise Systems, Inc., 2010 WL 1533383
(W.D.N.Y. April 15, 2010)

Strom v. National Enterprise Systems, Inc., 2011 WL 1233118
(W.D.N.Y. 2011).

Folts v. Eastern Asset Management, LLC, 2010 WL 1292498
(W.D.N.Y. March 29, 2010)

Annis v. Eastern Asset Management, LLC, 2010 WL 1035273
(W.D.N.Y. March 18, 2010)

Krapf v. Collectors Training Institute of Illinois, Inc., 2010 WL
584020 (W.D.N.Y. February 16, 2010)

Clayson v. Rubin & Rothman, LLC, 2010 WL 547476 (W.D.N.Y.
February 11, 2010)

Graffeo v. Revenue Assistance Corp., (W.D.N.Y. February 10.
2010)

Mostiller v. Chase Asset Recovery Corp., (W.D.N.Y. January 22,
2010)

McMahon v. Credex America, Inc. 2009 WL 5171888 (W.D.N.Y.
2009)

Bates v. I.C. System, Inc., 2009 WL 3459730 (W.D.N.Y. 2009)

Elder v. Gold., 2009 WL 3333234 (W.D.N.Y. 2009)

Raydos v. Cohen & Slamowitz, LLP, 2009 WL 2929166
(W.D.N.Y. 2009)

Miller v. Midpoint Resolution Group, LLC, 608 F.Supp.2d 389
(W.D.N.Y. 2009)

Berry v. National Financial Systems, Inc., 2009 WL 2843260
(W.D.N.Y. 2009)

Herman v. National Enterprise Systems, Inc., 2009 WL 1874197
(W.D.N.Y. 2009)

Herman v. National Enterprise Systems, Inc., 2009 WL 1874202
(W.D.N.Y. 2009)

Fentner v. Tempest Recovery Services, Inc., 2008 WL 4147346
(W.D.N.Y. 2008)

Spencer v. Arizona Premium Finance Co., Inc., 2008 WL
5432234 (W.D.N.Y. 2008)

Burchalweski v. Wolpoff & Abramson, LLP, 2008 WL 4238933
(W.D.N.Y. 2008)

Russell v. Hartweg, 2008 WL 2157122 (W.D.N.Y. 2008)

DeGeorge v. LTD Financial Services, L.P., 2008 WL 9059913 (W.D.N.Y. 2008)

Wegrzyn v. Vital Recovery Services, Inc., 2007 WL 4867584 (W.D.N.Y. 2007)

Stover v. Northland Group, Inc., 2007 WL 2580490 (W.D.N.Y. 2007)

Goodrich v. WFS Financial, Inc., 2008 WL 607390 (N.D.N.Y. 2007)

Sweeney v. D.C. Credit Services, Inc., 2007 WL 981919 (W.D.N.Y. 2007)

Prewitt v. Wolpoff & Abramson, LLP, 2007 WL 841778 (W.D.N.Y. 2007)

Harrison v. Federal Pacific Credit Co., LLC, 2006 WL 276605 (W.D.N.Y. 2007)

Trapper v. Credit Collection Services, Inc. 2011 WL 5080304 (W.D.N.Y.2011)

Basile v. I.C. System, Inc., 2011 WL 4368510 (W.D.N.Y.2011)

Moltz v. Firstsource Advantage, LLC, 2011 WL 3360010 (W.D.N.Y.2011)

Balk v. Feuerstein & Smith, LLP, 2011 WL 1557948 (W.D.N.Y.2011)

21. I have participated in one prior and am participating in two pending class action lawsuits:

Dawn Patton v. Portfolio Recovery Services, LLC and Catherine Catherine Hedgeman, WDNY, Case No. 1:09-cv-0806-RJA (Case settled prior to class certification)

Godson v. Eltman, Eltman and Cooper (Motion for Class Certification pending) (W.D.N.Y., Case No. 1:11-cv-764-EAW-HKS) (5/21/2018)

Michael Hallmark v. Cohen & Slamowitz, LLP, and Midland Funding LLC d/b/a Midland Funding of Delaware LLC, WDNY, Case No. 11-cv-0842(WMS)(LGF) (Motion for Class Certification granted 9/16/2013)

22. In addition, I have attended multiple workshops at consumer law seminars in which the primary topic has been class action litigation.

23. I generally charge \$350.00 per hour in cases I handle in consumer cases or other litigation where a Court does not determine my fee.

24. Courts in this district have awarded the undersigned \$215.00 per hour in attorneys fees in routine FDCPA cases in which the Defendant has defaulted. *See Twarozek v. Midpoint Resolution Group, LLC*, 2011 WL 3440096 (W.D.N.Y.) and *Romano v. Accelerated Receivables*, 2011 WL 6091704 (W.D.N.Y.).

25. This case is much more complex, involving the FDCPA, Bankruptcy Law, and Class Action law. The case was fiercely opposed by capable counsel.

26. That the undersigned is aware of only two other cases in which a class has been certified in this district in an FDCPA case, and that was a different case handled by Mr. Bromberg and I. (Easterling and Hallmark, cited above). As far as I am aware, there are no other attorneys in Western New York who handle class actions for consumer matters.

27. That as a result of the lack of competent class action co-counsel in Western New York, I found it necessary to co-counsel with Mr. Bromberg, an attorney from New York City.

28. Given my nearly 30 years of legal experience, the difficulty and complexity of this case, the fact that competent class action counsel for consumer cases other than the undersigned, does not exist, and for all the other reasons cited in the Memorandum of Law submitted herewith, it is hereby requested that I be awarded \$450.00 for legal services rendered in this case.

29. I have attached my time records in this case. These records were kept contemporaneously, and accurately reflect the time I spent on this case. I used billing judgment with these records. For example, I did not bill for every email sent and received or other routine or clerical tasks.

30. In the *Easterling* case, the undersigned sought an hourly rate of \$400.00. (See Dkt No. 66-2 in *Easterling* case.

31. The Court approved all hours sought at the \$400.00 hourly rate sought by the undersigned on December 19, 2013. (See Dkt. No. 68).

32. Given that the approval of a \$400.00 hourly rate was more than five years ago, it is submitted that a modest increase in that rate to \$450.00 is warranted and appropriate.

33. Based upon my time records (attached as **Exhibit A**), I have accumulated 108.4 hours working on this case, with an hourly rate of \$450.00, for a total of \$48,780.00.

34. Based on the time records (attached as **Exhibit B**) of Seth Andrews, an associate attorney in my office and has been active in this case

from beginning to end, Mr. Andrews accumulated approximately 47.6 hours of time at a billing rate of \$300 an hour, for a total of \$14,280.00.

35. I therefore request a total of \$63,060 in attorney fees for my office.

36. I also request that my office's out-of-pocket expenses of \$470 be reimbursed.

Dated: Amherst, New York
September 21, 2018

/s/ Kenneth R. Hiller
Kenneth R. Hiller